THE HONOURABLE SRI JUSTICE N.V.RAMANA

Writ Petition No.14637 of 2002

Dated: 1st March, 2006

Between:

B. Madhusudhan Rao.

…..PETITIONER

AND

Bank of India rep by its

Chairman-cum-Managing Director,

Head Office, Express Towers,

Nariman Point, Mumbai & 2 others.

….RESPONDENTS

THE HONOURABLE SRI JUSTICE

N.V.RAMANA

W.P. No. 14637 of 2002

ORDER:

The petitioner, initially assailing the initiation of departmental proceedings in pursuance of the Memorandum of Charges in Ref: VZO:IR:128, dated 05.02.2002 of the

3rd respondents, and prayed that the respondents be directed not to proceed with the departmental proceedings till the finalization of the proceedings under A.P.

(Scheduled Castes, Scheduled Tribes & Backward Classes) Regulation of Issue of Community Certificate Act, 1993.

As no interim stay of the departmental proceedings, as sought by the petitioner, was granted by this Court, the respondents proceeded with the departmental proceedings, which culminated into dismissal of the petitioner from service, vide Penalty Order passed by the 3rd respondent in Penalty Order Reference No. VZO/IR/140, dated 20.08.2002. Immediately, the petitioner while praying to permit him to delete the above-mentioned prayer, sought to amend the prayer in the writ petition, to declare the above Penalty Order passed by the 3rd respondent, as illegal and arbitrary, to set aside the same, and consequently reinstate the petitioner into service with all consequential benefits, which was permitted by this Court.

When the matter is taken up for hearing, it is submitted by the learned Standing Counsel for the respondents-Bank and admitted to by the learned counsel for the petitioner that in terms of the Bank of India Employees' (Discipline & Appeal) Regulations, 1976, the petitioner has preferred an appeal to the appellate authority against the Penalty Order passed by the 3rd respondent, and the same is pending.

Since the appeal filed by the petitioner is pending consideration by the appellate authority, the learned counsel for the petitioner submitted that the petitioner would pursue the appeal before the appellate authority, but submitted that in similar circumstances, a Division Bench of this Court in **K. Viswanatham v. Chief Commissioner of Income Tax, Hyderabad**, held that terminating the services on the ground that the employee obtained appointment on the basis of false certificate, without issuing prior notice, is illegal, and the appellate authority be directed to consider. The petitioner is always at liberty to take this plea before the appellate authority, and it cannot be presumed that the appellate authority would not consider such a plea.

Since the appeal is pending before the appellate authority,
I deem it appropriate to dispose of the writ petition with the following directions:

The appellate authority shall consider and dispose of the appeal filed by the petitioner against the order of the
3rd respondent, and the petitioner is at liberty to raise all the pleas, which he sought to now raise in this writ petition, before the appellate authority.

With the above observations, the writ petition is disposed of. No costs.

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(N.V. RAMANA, J.)

Date:01st March, 2006.

GRK